No. 22-99006

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Clarence Wayne Dixon,
Petitioner-Appellant,

vs.

David Shinn, et al.,
Respondents-Appellees.

On Appeal from the United States District Court
for the District of Arizona
Case No. 2:14-cv-00258-DJH

OPENING BRIEF OF APPELLANT
*****Execution Scheduled for May 11, 2022, at 10 a.m. PST*****

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INTRODUCTION

Petitioner-Appellant Clarence Wayne Dixon is a 66-year-old man of Native American ancestry with a longstanding and well-documented history of paranoid schizophrenia that spans four decades. Dixon is scheduled to be executed by the State of Arizona at 10 a.m. on May 11, 2022. He respectfully petitions this Court to review the judgment and orders of the district court denying his petition for writ of habeas corpus, and attendant motion for stay of execution, wherein he challenges under *Ford v. Wainwright*, 477 U.S. 399, 417–18 (1986), and *Panetti v. Quarterman*, 551 U.S. 930, 934–35 (2007), the unconstitutional warrant of execution to which he is subjected.

The evidence presented at the May 3, 2022 hearing in the Pinal County Superior Court on Dixon's *Ford* claim incontrovertibly demonstrated that Dixon is mentally incompetent to be executed under the Eighth Amendment to the U.S. Constitution. Although the State failed to rebut Dixon's medical and expert evidence proving his mental incompetency, the superior court nonetheless denied Dixon's *Ford* claim. It did so by ignoring evidence in the record demonstrating that Dixon experiences delusions as a result of his paranoid schizophrenic illness that prevent him from rationally understanding why he is being executed, by making findings that are unsupported and flatly contradicted by the record, and by contravening and unreasonably applying *Ford* and *Panetti*.

As set forth in Dixon's concurrently filed Motion for Stay of Execution and herein, the district court abused its discretion when it denied Dixon's habeas petition and motion for stay of execution consequent to its significantly expedited review of his habeas petition (which occurred in less than 24 hours) and after denying Dixon the right to reply in support of the Eighth Amendment claim raised therein. *Compare* Rule 1, Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules") ("These rules govern a petition for a writ of habeas corpus filed in a United States district court under 28 U.S.C. § 2254 by: (1) a person in custody under a state-court judgment who seeks a determination that the custody violates the Constitution, laws, or treaties of the United States[.]"), *and* Habeas Rule 5(e) (providing that "[t]he petitioner may file a reply to the respondent's answer or other pleading[]"), *with* 2-ER-69 (finding that "[b]ecause Dixon's execution is scheduled to take place in less than 48 hours, . . . [d]ue to the expedited nature of the request, the Court will not permit a reply[]"), and 1-ER3–28 (denying Dixon's habeas petition and motion for stay of execution). In short-circuiting Dixon's right to full and fair habeas review of his concededly timely and newly ripe *Ford* claim, the district court abused its discretion.

Dixon respectfully seeks this Court's intervention to correct this injustice which will otherwise result in the State of Arizona executing him in flagrant violation of the Eighth and Fourteenth Amendments and the statutory rights afforded to him under 28 U.S.C. § 2241 *et seq*. and the Habeas Rules.

STATEMENT OF JURISDICTION

Dixon is an indigent condemned prisoner in the custody of the Arizona Department of Corrections, Rehabilitation & Reentry. On May 10, 2022, the district court, which had jurisdiction under 28 U.S.C. §§ 2241 and 2254, denied Dixon's petition for writ of habeas corpus and attendant motion for stay of execution, denied a certificate of appealability, and entered judgment. (1-ER-2, 27–28.) On May 10, 2022, Dixon timely appealed under Federal Rule of Appellate Procedure 4(a) (4-ER-741), and this Court obtained jurisdiction under 28 U.S.C. §§ 1291, 1294, 1651, and 2253(a).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

CERTIFIED ISSUE

ISSUE ONE

The Eighth Amendment to the U.S. Constitution prohibits Dixon's execution because the psychotic delusions resulting from his paranoid schizophrenic illness prevent him from rationally understanding the State's reasons for his execution.

STANDARDS OF REVIEW

This Court reviews de novo a district court's denial of habeas relief. *Lopez v. Schriro*, 491 F.3d 1029, 1036 (9th Cir. 2007). It reviews the district court's factual findings for clear error. *Silva v. Woodford,* 279 F.3d 825, 835 (9th Cir. 2002). Dixon's petition is governed by the Antiterrorism and Effective Death Penalty Act ("AEDPA"). The district court's application of AEDPA, and its conclusions regarding whether AEDPA's limitations on relief have been met, are mixed questions of fact and law reviewed de novo. *Earp v. Ornoski*, 431 F.3d 1158, 1166 (9th Cir. 2005).

STATEMENT OF THE CASE

A. Dixon's longstanding and well-documented history of legal insanity, paranoid schizophrenia, and psychotically driven delusions

Dixon is a 66-year-old legally blind man of Native American ancestry who has long suffered from a psychotic disorder—paranoid schizophrenia. Previously, an Arizona court determined that he was mentally incompetent and legally insane. An Arizona Department of Corrections psychologist found that Dixon "operates on an intuitive feeling level, with much less regard for rationality and hard facts," and that he is a "severely confused and disturbed prisoner." (4-ER-520–21.)

For almost thirty years, Dixon has been unable to overcome his psychotically driven belief that all levels of the state and federal judiciary, including members of the Arizona Supreme Court, have conspired to deny him

relief on a claim that the Northern Arizona University ("NAU") police department lacked authority to investigate, arrest him, and collect his DNA in an unrelated 1985 criminal case.[1] Since 1991, Dixon has prepared an unending stream of pro se filings on this issue, fired his lawyers in the capital murder case so that he could continue to pursue this issue, and more recently has filed judicial complaints seeking disbarment of the Arizona Supreme Court Justices based on his belief that they are involved in an "extrajudicial killing, an illegal and immoral homicide created in the name [of] and for the people of Arizona." (3-ER-479; *see also* 4-ER-663–84, 692–93.)

B. Proceedings in the Pinal County Superior Court to determine Dixon's mental competency to be executed

i. Pre-hearing briefing

On April 5, 2022, the Arizona Supreme Court issued a warrant of execution scheduling Dixon's execution date for May 11, 2022. (2-ER-257–59); *see also* Ariz. R. Crim. P. 31.23(c). On April 8, 2022, Dixon filed a Motion to Determine Mental Competency to be Executed in the Pinal County Superior Court wherein he argued that expert evidence established that he "is presently unable to form a rational understanding of the State's reason for his execution rendering him incompetent to be executed[]" under the Eighth Amendment to the U.S.

[1] Dixon was never arrested by the NAU police, and his DNA was collected by the Arizona Department of Corrections.

Constitution. (2-ER-112.) That same day, the Superior Court found that Dixon demonstrated his entitlement to a hearing under A.R.S. § 13-4022, *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quarterman*, 551 U.S. 930 (2007), and scheduled that hearing for May 3, 2022. (2-ER-106–07.)

ii. The evidentiary hearing

At the evidentiary hearing on May 3, 2022, Dixon presented the testimony of Dr. Amezcua-Patino and introduced 30 exhibits in his case-in-chief. (3-ER-411–85; 4-ER-489–684, 692–93.) Dr. Amezcua-Patino testified that he has been a licensed physician and, since 1988, has specialized in psychiatry. (3-ER-411.) For the last 34 years Dr. Amezcua-Patino has maintained his clinical psychiatric practice and has 37 years' worth of experience diagnosing and treating people with schizophrenia. (3-ER-411, 415–16.) Dr. Amezcua-Patino testified that half of his work has been in the impatient setting, and that he has worked in "probably every single hospital in the Valley . . . including Arizona State Hospital." (3-ER-411.) In 2012, and again in 2022, Dr. Amezcua-Patino diagnosed Dixon with paranoid schizophrenia. (3-ER-429–30.)

Dr. Amezcua-Patino testified that Dixon clearly satisfied the diagnostic criteria for a schizophrenic illness under the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM-V")—a psychotic illness which derives from a thought disorder characterized by delusions, hallucinations,

cognitive symptoms, paranoia, and lack of emotionality. (3-ER-423–24.) He testified that people with schizophrenia are often intelligent and can "maintain a high level of sophistication in their thinking." (3-ER-426.) In men, "[t]he full-blown symptoms of schizophrenia usually get manifested in the late teens, early 20s" which, Dr. Amezcua-Patino testified, is when Dixon experienced the onset of that psychotic disorder. (3-ER-427, 435–36.)

Dr. Amezcua-Patino testified that Dixon, as a direct result of his schizophrenic illness, experiences auditory, visual, and tactile hallucinations. (3-ER-452–53.) He also experiences "paranoia, meaning he's distrustful and concerned about what other people are trying to do to him[,]" and delusional grandiosity. (3-ER-454, 462.) According to Dr. Amezcua-Patino, Dixon "feels that there is a plot where the judicial system has to protect themselves from his claims because his claims [related to the Northern Arizona University Police] will be terribly embarrassing." (3-ER-454.) Dr. Amezcua-Patino testified about the questioning techniques he employed with Dixon over the course of several in-person evaluations designed to test the rigidity of his delusions:

> . . . I had multiple – multitude of techniques in terms of empathic understanding, empathic questioning, you know, paradoxical intention, to try to get him to explain to me how it is that despite all of this evidence that has been provided in front of him about, again, the irrationality of his request, including from his attorneys, and ne always gets back to the same point, which is, **"They say that they want to kill me because I killed someone. But I know that they want to kill me because they don't want to be embarrassed."**

(3-ER-455–56 (emphasis added).)

In order to evaluate Dixon's mental competency for execution, Dr. Amezcua-Patino testified that he reviewed "about 5,100 pages of documents" that pre-dated [Dixon's] incarceration and contained "lifetime type of information." (3-ER-419.) That information reflected that "the issue of mental illness and schizophrenia has been raised long before this last set of meetings with [Dixon]." (3-ER-420.) Dr. Amezcua-Patino met Dixon in person "[f]our times" and "a fifth time" including his visit nearly a decade ago. (3-ER-419.)

Dr. Amezcua-Patino testified that in order for a person to be mentally competent to be executed "he needs to be able to not only understand that somebody wants to kill him, but he needs to understand the reasons for that[,]" including the societal interests in his execution. (3-ER-429, 457.) "And he has to have enough rationality to develop that understanding." (3-ER-429, 457.) Dr. Amezcua-Patino testified that, in Dixon's case, "in all the time that I've spent with him, he has not been able to do that." (3-ER-457.) This is because, Dr. Amezcua-Patino explained, when prompted to consider his impending execution, Dixon "goes back to this same premise of: They're afraid of me embarrassing them" because of his claim against the NAU police. (3-ER-457.) Dr. Amezcua-Patino testified that while "[t]here have been some different variations over the years in terms of different wording to the same thing, and going into different explanations,

which is not unusual for people with delusional thinking[,]" the crux of Dixon's psychotic delusion "always go[es] back to the same [psychotic delusional] premise, meaning: **They want to execute me because they don't want to be embarrassed**." (3-ER-457–58 (emphasis added).)

The superior court questioned Dr. Amezcua-Patino next. (3-ER-278–79.) The court asked Dr. Amezcua-Patino to explain how to reconcile Dixon's high intelligence and pro se writings which "seem to suggest, . . . ordered thought" and "rationality," with Dr. Amezcua-Patino's opinion that he does not rationally understand the State's reasons for his execution. (3-ER-278–79.) Dr. Amezcua-Patino testified that it was important to view Dixon's writings "in the context of an illness[.]" (3-ER-280.) "[T]he fact that he knows the law, and the fact that he knows facts about the law, doesn't mean that these conclusions of law are rational[,]" Dr. Amezcua-Patino explained. (3-ER-280–81.) He added further that "there are a number of factors here so factual knowledge is not the same as rational understanding." (3-ER-280.)

To rebut Dixon's evidence, the State called Carlos Vega, Psy.D., and entered two exhibits[2] into evidence in rebuttal. (3-ER-292–311.) In all, Dr. Vega's direct examination consisted of just twenty pages of transcript. (3-ER-292–311.) Dr.

[2] Those exhibits consisted of Dr. Vega's report (4-ER-686–91) and CV (4-ER-685).

Vega testified that he received his doctorate in psychology and works primarily with the courts to conduct Rule 11 prescreens and competency assessments pursuant to Rule 26.5 of Arizona's Rules of Criminal Procedure. (3-ER-292–94.) He stated that he has testified as an expert in the Pinal County Superior Court in "[m]ostly in DCS cases." (3-ER-294.) Dr. Vega testified that in that context, he generally interviews the subject of his evaluation "one time." (3-ER-295.)

In Dixon's case, Dr. Vega testified that he reviewed "a number of evaluations, a number of court documents" and conducted a 70-minute evaluation of Dixon by video. (3-ER-297.) He testified that Dixon denied receiving psychotropic medications and appeared to have "above average intellect." (3-ER-299–300.) They talked about politics and, according to Dr. Vega, Dixon's reference to President Biden as a "lukewarm leader" indicated that he "is acutely aware of reality." (3-ER-301.) Dr. Vega testified that Dixon said his DNA had been obtained illegally, he had no memory of the murder, and, in response to a hypothetical question from Dr. Vega about "what if all of a sudden you have a recollection that you did kill [the victim], and he said . . . you know, if I killed her, if I have memories of killing her, on my way to execution, I would feel relief." (3-ER-304–05.)

Dr. Vega testified that Dixon could not be delusional because "in order for there to exist, a delusion, in order for there to be a delusion, you it is impossible

for it to happen." (3-ER-307.) When asked by the State, "does what Dixon's specific diagnosis is, ultimately affect your opinion about whether he has a rational understanding of the State's reason for his execution?" Dr. Vega testified, without hesitation, "Yeah, of course it does." (3-ER-308.) Dr. Vega stated he diagnosed Dixon with "antisocial personality disorder[.]" (3-ER-308.)

Dr. Vega testified that even if Dixon held the delusional belief about the courts conspiring to reject his NAU claim in order to protect government actors from embarrassment, he is nonetheless mentally competent to be executed based on factors found insufficient in *Panetti*: because "it doesn't affect the connection between I murdered her or I don't remember murdering her. I may have murdered her. And I am being executed." (3-ER-309–10.) Ignoring the fact that Dixon's competency to represent himself was never evaluated pre-trial, Dr. Vega testified further that Dixon's mental competency for execution is supported by the fact that he "was never found incompetent to represent himself." (3-ER-310.) According to Dr. Vega, Dixon's writings also reflect that he "is not delusional." (3-ER-311.)

On cross-examination, Dr. Vega admitted that he has never previously evaluated a person's mental competency for execution (3-ER-312), is not a medical doctor and has no experience treating people with schizophrenia (3-ER-312–13), "did a little bit, very little" research into the standards for assessing competency for execution (3-ER-366), and intentionally destroyed the audio recording of his

interview with Dixon (3-ER-314).

Dr. Vega testified that he found Dixon cognitively intact because "of motions that he writes and stuff.]"[3] (3-ER-315.) When asked how that finding could be reconciled with Dixon's prior neuropsychological test scores showing "significant cognitive impairments[,]" Dr. Vega dissembled, claiming that because an MRI of [Dr. Vega's] own brain showed "significant" pathologies, validated neuropsychological "test results . . . don't say a lot to me." (3-ER-316.) He then added "and of course I am not all completely there." (3-ER-316.) Then in an about-face, Dr. Vega reported finding that Dixon showed "cognitive distortions." (3-ER-326–27.) Dr. Vega admitted that information Dixon provided about his weight, reason for weight loss, and the number of days until his execution were all incorrect (3-ER-318–20) but denied that this was evidence of confusion (3-ER-321). He also admitted that impending execution "may affect [Dixon's] memory here and there." (3-ER-321.)

Dr. Vega agreed that Dixon's "beliefs about his NAU argument and about why it has been consistently denied is a fixed belief that is not amenable to change in light of conflicting evidence[.]" (3-ER-335.) This is the very definition of a delusional belief incidental to a schizophrenia diagnosis in the DSM-V. (4-ER-

[3] Dr. Vega later testified that he "didn't read" and "just barely, you know, looked at" Dixon's writings. (3-ER-358.)

710.) Defying reason and common sense, let alone professional diagnostic standards, Dr. Vega insisted the DSM-V definition of delusional thinking was wrong and that his own personal standard should be applied.

Dr. Vega testified that his evaluation of Dixon's competency to be executed focused on assessing what transpired related to the murder and whether Dixon was involved. (3-ER-361.) He confirmed that the extent of his inquiry consisted of asking Dixon whether he knew the murder victim, recalled the murder, and Dixon's statements that he would not be executed if he lived in a state without the death penalty, did not recall the crime and could not bring the victim back, and would feel relief if he were to hypothetically regain his memory. (3-ER-361–62.) With respect to the claim that Dixon expressed "relief" in response to Dr. Vega's hypothetical, Dr. Vega admitted that those were not Dixon's exact words, and he asked no follow up questions. (3-ER-363–65, 374–75.) Dr. Vega also testified that he never asked Dixon the question "why do you believe that you are being executed" because "I didn't have to. I really didn't have to ask him what he believed. I mean it was – it was obvious." (3-ER-365–66.)

iv. The state court's decision and exhaustion

The Pinal County Superior Court found that Dixon failed to prove that he is mentally incompetent to be executed under the Eighth Amendment to the U.S. Constitution. (1-ER-30–34.) Dixon appealed the denial of his *Ford* claim to the

Arizona Supreme Court (2-ER-70–105), which declined jurisdiction (1-ER-29).

v. The proceedings below

Also on May 9, 2022, Dixon filed a petition for writ of habeas corpus in the district court raising his *Ford* claim. On May 10, 2022, the district court denied Dixon's petition and request for a stay based on its expedited review and after denying him the opportunity to file a supporting reply. (*see* USDC ECF No. 88.)

This appeal follows.

ARGUMENT

CERTIFIED ISSUE ONE

ISSUE ONE

The Eighth Amendment to the U.S. Constitution prohibits Dixon's execution because the psychotic delusions resulting from his paranoid schizophrenic illness prevents him from rationally understanding the State's reasons for his execution

In *Ford v. Wainwright*, the United States Supreme Court held that "the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane." 477 U.S. 399, 409–10 (1986). In so holding the Supreme Court reasoned that it "is no less abhorrent today than it has been for centuries to exact in penance the life of one whose mental illness prevents him from comprehending the reasons for the penalty or its implications." *Id.* at 417.

The Court clarified *Ford*'s substantive incompetency standard in *Panetti v. Quarterman* where it rejected "a strict test for competency [to be executed] that treats delusional beliefs as irrelevant once the prisoner is aware the State has identified the

link between his crime and the punishment to be inflicted." 551 U.S. 930, 960 (2007). Repudiating a competency standard that focuses on a prisoner's mere "awareness of the State's rationale for an execution," *id.* at 959, the Court held that a prisoner must also have a rational understanding of the State's reason for his execution—that is, he must be able to "comprehend[] the *meaning and purpose* of the punishment to which he has been sentenced," *id.* at 960 (emphasis added). The uncontroverted medical evidence presented at the state competency hearing demonstrates that Dixon does not have a rational understanding of why he is being executed, barring his execution under the Eighth Amendment.

The evidence demonstrated that Dixon suffers from a severe mental illness, schizophrenia with paranoid ideations the hallmark of which is delusional and contaminated thought content. As a result of this psychotic illness, Dixon has experienced long-standing hallucinations and persecutory delusions, and consequently does not have a rational understanding of why the State is attempting to execute him. *See Panetti*, 551 U.S. at 958; *see also Ford*, 477 U.S. at 409. In its order denying Dixon's *Ford* claim, the state court contravened and unreasonably applied the *Panetti* standard. (*See* 2-ER-37.)

In its order denying Dixon's *Ford* claim, the state court contravened and unreasonably applied the *Panetti* standard. (2-ER-58.) The court relied on statements from Dixon that reflected his awareness that the State says it "want[s] to kill me for

murder[.]" (1-ER-31–33.) But that is precisely the "too restrictive" inquiry that the Supreme Court rejected in *Panetti*. 551 U.S. at 956–58; *see also Benson v. Terhune*, 304 F.3d 874, 880 (9th Cir. 2002) ("A state court's decision is an 'unreasonable application' of federal law if it [ ] correctly identifies the governing rule but applies it to a new set of facts in a way that is objectively unreasonable[.]"). Dixon's awareness of the State's rationale does not show he has a rational understanding of it. *Panetti*, 551 U.S. at 958–59 ("The potential for a prisoner's recognition of the severity of the offense and the objective of community vindication are called in question, . . . if a prisoner's mental state is so distorted by mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole.").

The superior court also characterized Dixon's reaction to the judiciary's denial of his legal claims as suggesting only Dixon's perception of judicial "bias." (1-ER-31–33.) But that Dixon believes there is judicial bias is irrelevant to the critical question of whether Dixon's perception of bias is grounded in reality. The evidence shows it is not: the judges in Arizona are not, as Dixon believes, orchestrating his execution as part of a coverup for the NAU police's illegal investigative, arrest, and DNA collection activities back in 1985—all in order to protect the NAU police and government entities from the embarrassment of that exposé. (4-ER-494–95; 3-ER-309–10, 482.) Nor are they involved in an

"extrajudicial killing, an illegal and immoral homicide created in the name [of] and for the people of Arizona." (3-ER-479; *see also* 4-ER-663–84, 692–93.)

The superior court found that Dixon proved by clear and convincing evidence that he has paranoid schizophrenia. (1-ER-31.) However, it dismissed the unrefuted medical evidence of Dixon's psychotic delusional thought process resulting therefrom as only "arguably delusional" and merely reflective of Dixon's "favored legal theory." (1-ER-31–32.) Again, Dixon does have a favored legal theory, but that alone begs the relevant question: whether that theory is grounded in a serious mental illness which impairs Dixon's rational understanding of the reasons for his execution. *Panetti* required the Superior Court to focus on that question.

It should have assessed Dixon's mental competency within the framework of his schizophrenic illness and the psychotic delusions to which it characteristically gives rise. *Panetti*, 551 U.S. at 960 ("The beginning of doubt about competence in a case like petitioner's is not a misanthropic personality or an amoral character. It is a psychotic disorder."). Applying *Panetti*'s framework here, the superior court failed to assess how Dixon's favored legal theory is inextricably linked to his delusional, psychotic-driven belief that "[t]hey say that they want to kill me because I killed someone. But I know that they want to kill me because they don't want to be embarrassed" that the NAU police in 1985 acted without

statutory jurisdiction by arresting him in an unrelated criminal case, investigating, and collecting his DNA. (4-ER-691.) Under *Panetti*, "the legal inquiry concerns whether these delusions can be said to render [Dixon] incompetent." *Id.* at 956.

The state court also based its denial on unreasonable factual determinations, including by inexplicably ignoring the report and testimony of Dixon's psychiatric expert, Lauro Amezcua-Patino, M.D., and instead relying on cherrypicked observations from the State's expert, Carlos Vega, Psy.D., who conducted his evaluation of Dixon in 70 minutes over video, admitted never asking Dixon why he believed he was being executed (the critical question under *Panetti*), testified that he disagreed with and capriciously refused to apply the DSM-5 diagnostic criteria for schizophrenia, delusions, persecutory delusions, and failed to apply the DSM-5 diagnostic criteria to his own diagnosis of antisocial personality disorder. (2-ER-42–67.)

The superior court also relied on evidence that Dixon made "reflective observations" in prior writings, has high-average intelligence, and has "shown sophistication, coherent and organized thinking, and fluent language skills in pleadings and motions that he drafted" in order to "reject[]" the assertion that Dixon's fixation over the NAU issue "is dispositive" of the competency question. (1-ER-32.) This finding was predicated on ignoring the report and testimony of Dr. Amezcua-Patino and was therefore objectively unreasonable. *See Miller-El v.*

Cockrell, 537 U.S. 322, 346 (2003) (noting that state-court factfinding processes are undermined where the state court has before it, yet ignores, evidence that supports petitioner's claim).

The superior court's finding that Dixon's claim pertaining to the NAU police was only "arguably delusional" was an unreasonable determination of the facts in light of the evidence presented at the hearing. *See* Statement of the Case, *supra*. It also conflicts with the court's contrary finding that Dixon suffers from a psychotic disorder, as well as the uncontroverted medical evidence demonstrating otherwise. Both experts agreed that Dixon's fixated and unshakeable belief—that actors throughout all levels of the judiciary have conspired to deny claim against the NAU police not because it is legally incorrect, but because they know it is meritorious and want to protect the government from the embarrassment that would result from his exposé of the NAU police's unlawful investigative activities back in 1985—meets the DSM-5 definition of delusion. (3-ER-335–36.) Dr. Vega however testified that this belief is not a delusion because the DSM-5 definition of delusion is wrong and "watered down," compared to his own "40 years of working in this field."[4] (3-ER-337, 342.)

[4] As discussed previously, Dr. Vega also testified that is not a medical doctor, has no experience diagnosing or treating schizophrenia, has no patients, and rarely sees subjects more than once because his work is exclusively court-ordered evaluations in the pre-screening context prior to trial. Dr. Vega explained that he "do[es not] do

The superior court's finding that Dixon did not establish that he suffers from delusions ignores the uncontested testimony by both experts that Dixon's belief about why his NAU claim has been repeatedly denied meets the DSM-5 definition for delusion. *See Brumfield v. Cain*, 576 U.S. 305, 316 (2015) (failure to consider evidence before the court results in an unreasonable determination of the facts); *Taylor*, 366 F.3d at 1000–01. It demonstrates that the superior court relied on Dr. Vega's more restrictive personal definition of delusion, contravening generally accepted medical definitions as outlined in the DSM-5. No reasonable jurist could disagree that the superior court's adoption of Dr. Vega's diagnostically incorrect and unsubstantiated definition of "delusions" was flatly unsupported by the record. 28 U.S.C. § 2254(d)(2). *Cf. Harrington v. Richter*, 562 U.S. 86, 101 (2011) ("A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004))).

Dr. Amezcua-Patino has explained that, in the context of Dixon's paranoid schizophrenic thought disorder, his "unshakeable" belief that the judicial system and actors in it have all conspired to wrongly deny his NAU claim to shield government entities from embarrassment qualifies as a delusion under the

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any treatment at all" because he would "probably go crazy if I did, so I just do the [evals]." (3-ER-312.)

diagnostic criteria and prevents him from developing the rationality of thought necessary to understand the meaning and purpose of his execution. (3-ER-420; 4-ER-710.) This evidence was not refuted by Dr. Vega, whose contrived opinions conflict with generally accepted diagnostic criteria.[5]

The superior court's conclusion, without any supporting evidence, that Dixon engages in only "arguably delusional thinking," consequent to a mere "favored legal theory[]" was objectively unreasonable. (1-ER-32.) Once the superior court determined Dixon suffered from schizophrenia, by definition, it was required to also conclude that Dixon, in fact, experiences delusional thinking attendant to that psychotic illness. *See Panetti*, 551 U.S. at 955-56. Because the superior court ignored the evidence before it and made findings expressly contradicted and unsupported by the medical and record evidence presented at the competency hearing, its rejection of Dixon's *Ford* claim was objectively unreasonable. 28 U.S.C. § 2254(d)(2); *Brumfield*, 576 U.S. at 316; *Taylor*, 366 F.3d at 1000–01, 1005 ("The state courts' failure to consider [probative evidence] casts serious doubt on the state-court fact-finding process and compels the

[5] The superior court's finding also disregarded points on which both experts agreed: Dr. Vega conceded that Dixon's "beliefs about his NAU argument and why it has been consistently denied is a fixed belief that is not amenable to change in light of conflicting evidence[,]" thus qualifying as a delusion under the DSM-V definition. (3-ER-335.) Dr. Vega even acknowledged that Dixon "could very well have had delusional disorder" and "[a]bsolutely" be on the "schizophrenic spectrum." (3-ER-330–31, 351.)

conclusion that the state-court decisions were based on an unreasonable determination of the facts.").

The record of the *Ford* proceedings leaves no room for doubt that the state court's denial of Dixon's *Ford* claim contravened and unreasonably applied *Panetti*, and was based on unreasonable factual determinations disentitling that adjudication to deference from this Court under § 2254(d)(1) and (2). And because the State failed to rebut the overwhelming evidence demonstrating that Dixon does not rationally understand the State's reasons for his execution as a function of the delusional thought content to which his schizophrenic illness gives rise (*see* 2-ER-42–67), the district court abused its discretion when it concluded otherwise.

The district court recognized that "[t]here is no doubt that Dixon's 'concept of reality,' is flawed by his delusional belief that the courts have denied relief on his claimed legally valid NAU issue for reasons unrelated to its merits." (1-ER-24.) However, the superior court ruled that Dixon had *not* demonstrated that he experienced delusions, instead characterizing Dixon's belief as "arguably delusional," or simply his belief of judicial "bias." (1-ER-32.). As even the district court recognized, however, "there is no doubt" that Dixon holds a "delusional belief that the courts have denied relief on his claimed legally valid NAU issue for reasons unrelated to its merits." That finding, by itself, demonstrates that the superior court's contrary determination that Dixon had *not* proved his beliefs are

delusional was an unreasonable factual determination. *See* 28 U.S.C. § 2254(d)(2).

It also demonstrates that the district court failed to consider the question of Dixon's rational understanding within the context of the symptoms of his mental illness, as required by *Panetti*. *See* 28 U.S.C. § 2254(d)(1). The superior court's adoption of Dr. Vega's more restrictive personal definition of delusion, contravening generally accepted medical definitions as outlined in the DSM-5, was objectively unreasonable. No fair-minded jurist could disagree that the superior court's adoption of Dr. Vega's diagnostically incorrect and unsubstantiated definition of "delusions" was flatly unsupported by the record. 28 U.S.C. § 2254(d)(2). *Cf. Harrington v. Richter*, 562 U.S. 86, 101 (2011) ("A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004))).

CONCLUSION

The district court abused its discretion when, in haste, and only after truncating Dixon's procedural rights under 28 U.S.C. § 2241 *et seq.* and the Habeas Rules, denied Dixon's habeas petition and attendant request to stay his execution. For that and all of the foregoing reasons, Dixon respectfully requests that this Court (1) permit full briefing and argument on his *Ford* claim challenging his mental competency to be executed, including by first remanding this case to the district

court for full briefing—as opposed to the expedited and truncated briefing it ordered—on his habeas petition; and (2) issue a stay, enjoining Dixon's execution which is currently scheduled for May 11, 2022 at 10 a.m.

Respectfully submitted: May 10, 2022

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CERTIFICATE OF COMPLIANCE
PURSUANT TO 9TH CIRCUIT RULES 28-4, 29-2(C)(2) AND (3), 32-2 OR 32-41

This brief complies with the length limits permitted by Ninth Circuit Rule 32-4. The brief is 5,388 words excluding the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

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CERTIFICATE OF SERVICE

I certify that on May 10, 2022, I transmitted the foregoing Opening Brief using the Appellate CM/ECF system for filing and transmittal of a Notice of Docket Activity to the following ECF registrants:

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